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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-439

PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE GUAM BAR ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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STATUTES PRESENTED

In addition to Section 22 of the Organic Act of Guam, as amended, (48 U.S.C. §1424), the Guam and Virgin Islands Constitutional Convention Act, 90 Stat. 2899 (Public Law 94-584), October 21, 1976, is involved and is set forth in the appendix to this brief (hereinafter "Con Con Act").

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Congress authorized the Territory of Guam in the Organic Act of Guam, as originally

passed or subsequently amended, to establish an appellate court separate and distinct from the appellate jurisdiction of the District Court of Guam.

2. Whether the Con Con Act is a clear indication that the Congress of the United States intends to maintain a Guam judicial system that includes a system of local courts with access by appeal to the federal judicial system.

APPEARANCE OF GUAM BAR ASSOCIATION

By consent of the parties hereto, filed concurrently herewith, the Guam Bar Association files this *amicus curiae* brief in support of respondent.

SUMMARY OF ARGUMENT

Neither the original Organic Act of Guam nor any subsequent amendment authorizes Guam to transfer the appellate jurisdiction of the District Court of Guam to a locally created court.

The Con Con Act indicates that Congress desires that there be a continuation of the appeal relationship between the local courts of Guam with the federal judicial system.

ARGUMENT

I

SECTION 22 OF THE ORGANIC ACT OF GUAM, AS AMENDED, AS WELL AS ITS LEGISLATIVE HISTORY, SUPPORT THE HOLDING BELOW THAT THE CONGRESS INTENDED THAT DECISIONS OF GUAM BE SUBJECT TO REVIEW BY THE COURT OF APPEALS FOR THE NINTH CIRCUIT.

Petitioner relies heavily upon the provisions of the judicial system of the Virgin Islands and its legislative history in concluding as it does on page 15 of its brief, " * * * the Congress of the United States intended that the jurisdiction allowed to the courts of Guam be different and greater than that allowed to the courts of the Virgin Islands."

In making this statement, Petitioner has apparently overlooked the Guam Con Con Act, *supra,* which provides in §2(b)(6) and (7) that Guam, should it elect to make a constitution,[1] shall provide for a system of local courts consistent with the provisions of the Revised Organic Act of the Virgin Islands, July 22, 1954, 68 Stat. 506 (48 U.S.C. §§1611-1617) and provide for the establishment of a system of local courts after the enactment of legislation regulating the relationship between the local courts of Guam and the federal judicial system.

That Congress was aware of the en banc decision now at bar is borne out by the committee hearings on H.R. 4580, July 31, 1975, which bill would have amended the Organic Act of Guam to permit or con-

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[1]Guam has enacted local legislation pursuant to the Con Con Act, being Guam Public Law 13-202, December 10, 1976, Thirteenth Guam Legislature, printed in the appendix to this brief.

firm and ratify the Guam Court Reorganization Act. Hearing on H.R. 4580 before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, 94th Congress, 1st Session Service 19.

The Guam Bar Association believes the District Court of Guam, in *Agana Bay Development Company (Hong Kong) Ltd. v. Supreme Court of Guam,* 422 F.Supp. 593 at page 605 correctly places the whole question of congressional intent and history in proper perspective:

> "If one accepts respondent's (Petitioner here) argument, then it must necessarily follow that since its inception under the Organic Act, the legislature has had the authority to vest appellate jurisdiction in a court of its own creation, such as the respondent court, determine the appointment processes of the judges of such court, and fix the qualifications of the judges of such court."

The legislative history of the Organic Act of Guam and, in particular, Judge Albert Maris, in his letter of March 14, 1957, addressed to the Honorable Clair Engle, endorses the concept of appellate jurisdiction in the District Court of Guam as confirmed by the 1958 amendment amending §§22 and 24 of the Guam Organic Act, Sen.Rep. No. 1582, 85th Congress, 2d Sess. (1958) 1958 U.S. Code & Administrative News, pp. 2628-30.

Guam Bar submits as to the other points raised by the Petitioner with respect to legislative history and statutory interpretation is amply covered by the opinion of the District Court of Guam in *Agana Bay De-*

velopment Company (Hong Kong) Ltd. v. Supreme Court of Guam, supra, and the reasoning of the en banc court below.

The future judicial system of the Commonwealth of the Northern Marianas is not direct or indirect evidence of the congressional intent in 1950 with respect to Guam's judicial system. The Guam Bar further submits the drafters of the covenant have not done their homework and taken heed of the drafting problem which has given rise to this litigation. The original drafters of Guam's Organic Act could have been more precise and the use of the same language in the covenant may be unfortunate to that government.

Since the United States assumed trustee status with respect to the Northern Marianas Islands, there has been no appeal from the appellate division of the Trust Territory High Court to any federal court, in Guam, Honolulu, or elsewhere. The best one can say is that the Northern Marianas Commonwealth law apparently continues or authorizes the existing situation.

Secondly, by its very definition, commonwealth status implies greater autonomy than does that of an unincorporated territory.

II

PETITIONER IN ITS ARGUMENT VII OVERSTATES THE INDEPENDENCE WHICH HAS BEEN ENTRUSTED TO THE PEOPLE OF GUAM AND ITS GOVERNMENT IN THAT CONGRESS ULTIMATELY RETAINS PLENARY POWER WITH RESPECT TO GUAM.

Petitioner has overbuilt the scaffolding which it asserts has been established as a framework within which the Government of Guam is permitted to operate. Petitioner is incorrect when it states that the legislative power of Guam has no limitations imposed by Congress. (Petitioner's brief, page 32). The Guam Elective Governor Act, Public Law 90-497, §8, 82 Stat. 847, September 11, 1968, provides in part as follows: . . . "All laws enacted by the legislature shall be reported by the Governor to the head of the department or agency designated by the President under Section 1421a of this title. The Congress of the United States reserves the power and authority to annul the same."

Since there exists a right of legislative appeal, it is not difficult to conceive of a Congressional desire to provide a judicial appeal to the federal appellate system, both of which are not antagonistic to the well announced policy of furtherance of self-determination for Guam.

As of the date this brief was mailed to the printer, on February 11, 1977, the Guam Bar was unable to locate any meaningful legislative history concerning the provisions of the Con Con Act with respect to the Guam judicial system. Sections 21, 22 and 23 of subchapter V of the Revised Organic Act of the Virgin Islands, 68 Stat. 506, (48 U.S.C.A.

§§1611, 1612 and 1613), do in fact establish a federal court relationship in the Virgin Islands by providing that the District Court of the Virgin Islands and any local courts shall have exclusive jurisdiction of civil matters involving more than $500 and in criminal cases where the maximum punishment exceeds $100 or imprisonment for more than six months. The district court judges are appointed by the President of the United States with the advice and consent of the Senate.

CONCLUSION

The Guam Bar Association, as amicus curiae herein, respectfully submits that the judgment of the court below be affirmed.

Dated this 16th day of February, 1977.

WALTER S. FERENZ,
Attorney for Guam Bar Association, Amicus Curiae.

P.O. Box BF
Agana, Guam

(Appendix Follows)

APPENDIX

PUBLIC LAW 94-584—94th CONGRESS—
OCT. 21, 1976—90 STAT. 2899

An Act

To provide for the establishment of constitutions for the Virgin Islands and Guam

Oct. 21, 1976
[H.R. 9460]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress, recognizing the basic democratic principle of government by the consent of the governed, authorizes the peoples of the Virgin Islands and of Guam, respectively, to organize governments pursuant to constitutions of their own adoption as provided in this Act.

Virgin Islands and Guam. Constitutions. 48 USC 1391 note.

SEC. 2. (a) The Legislatures of the Virgin Islands and Guam, respectively, are authorized to call constitutional conventions to draft, within the existing territorial-Federal relationship, constitutions for the local self-government of the people of the Virgin Islands and Guam.

48 USC 1391 note.

(b) Such constitutions shall—

(1) recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands and Guam, respectively, and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands and Guam, respectively, including but not limited to, those provisions of the Organic Act and Revised Organic Act of the Virgin Islands

48 USC 1406m, 1541 note.
48 USC 1421 note.

and the Organic Act of Guam which do not relate to local self-government.

(2) provide for a republican form of government, consisting of three branches: executive, legislative, and judicial;

(3) contain a bill of rights;

(4) deal with the subject matter of those provisions of the Revised Organic Act of the Virgin Islands of 1954, as amended, and the Organic Act of Guam, as amended, respectively, which relate to local self-government;

(5) with reference to Guam, provide that the voting franchise may be vested only in residents of Guam who are citizens of the United States;

(6) provide for a system of local courts consistent with the provisions of the Revised Organic Act of the Virgin Islands, as amended; and

(7) provide for the establishment of a system of local courts the provisions of which shall become effective no sooner than upon the enactment of legislation regulating the relationship between the local courts of Guam with the Federal judicial system.

48 USC 1391 note.

SEC. 3. The members of such constitutional conventions shall be chosen as provided by the laws of the Virgin Islands and Guam, respectively (enacted after the date of enactment of this Act): *Provided, however,* That no person shall be eligible to be a member

of the constitutional conventions, unless he is a citizen of the United States and qualified to vote in the Virgin Islands and Guam, respectively.

Proposed constitutions, submittal to governors and President. 48 USC 1391 note.

SEC. 4. The conventions shall submit to the Governor of the Virgin Islands a proposed constitution for the Virgin Islands and to the Governer of Guam a proposed constitution for Guam which shall comply with the requirements set forth in section 2(b) above. Such constitutions shall be submitted to the President of the United States by the Governors of the Virgin Islands and Guam.

Transmittal to Congress. 48 USC 1391 note.

SEC. 5. Within sixty calendar days after the respective date on which he has received each constitution, the President shall transmit such constitution together with his comments to the Congress. The constitution, in each case, shall be deemed to have been approved by the Congress within sixty days after its submission by the President, unless prior to that date the Congress has approved the constitution, or modified or amended it, in whole or in part, by joint resolution. As so approved or modified, the constitutions shall be submitted to the qualified voters of the Virgin Islands and Guam, respectively, for acceptance or rejection through islandwide referendums to be conducted as provided under the laws of the Virgin Islands and Guam, respectively, (enacted after the date of enactment of this Act). Upon approval by not less than a majority of the voters (counting only the affirmative or negative votes) participating in such

Submittal to voters.

referendums, the constitutions shall become effective in accordance with their terms.

Approved October 21, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-507, pt. 2 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 94-1033 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD:

Vol. 121 (1975): Oct. 6, considered and passed House.

Vol. 122 (1976): July 20, considered and passed Senate, amended.

Sept. 22, House concurred in Senate amendment with an amendment.

Oct. 1, Senate agreed to House amendment.

Thirteenth Guam Legislature
1976 Second) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 978, "An Act to repeal and reenact Chapter III of Title XVI of the Government Code to call a Constitutional Convention and to make an appropriation for such convention and for other purposes", was on the 2nd day of December, 1976, duly and regularly passed.

/s/ Joseph F. Ada
Joseph F. Ada
Speaker

Attested:

/s/ Frank F. Blas
Frank F. Blas
Acting Legislative Secretary

This Act was received by the Governor this 6th day of December, 1976, at 2:45 o'clock P.M.

/s/ Helen P. Alvarez
for Ruth F. Won Pat
Assistant Staff Officer
Governor's Office

Approved:

/s/ Ricardo J. Bordallo
Ricardo J. Bordallo
Governor of Guam

Dated: December 10, 1976
11:54 A.M.

P.L. 13-202

Thirteenth Guam Legislature
1976 (Second) Regular Session

Bill No. 978
Substituted by
Committee on Rules

Introduced by

F. F. Blas
J. F. Ada
T. V. C. Tanaka
E. R. Duenas
B. M. Palomo
C. T. C. Gutierrez
A. C. Sanchez
F. R. Santos
B. D. Ada
C. C. Barrett
E. M. Espaldon
J. M. Rivera
G. R. Salas
J. H. Underwood
A. C. Ysrael
E. T. Charfauros
A. L. Cristobal
J. R. Duenas
R. P. Duenas
A. A. Sekt
R. F. Taitano

AN ACT TO REPEAL AND REENACT CHAPTER III OF TITLE XVI OF THE GOVERNMENT CODE TO CALL A CONSTITUTIONAL CONVENTION AND TO MAKE AN APPROPRIATION FOR SUCH CONVENTION AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Chapter III of Title XVI of the Government Code is repealed and reenacted to read:

"CHAPTER III

Constitutional Convention

Section 15200. Statement of Legislative Intent. The fundamental right of the people to

draft and approve a constitution for the territory of Guam having been recognized by the Congress and the President of the United States by the enactment of Public Law 94-584, the Legislature expresses its intent to establish a Constitutional Convention, determine the method of selecting delegates, and appropriate necessary funds, for the purpose of drafting a Guam Constitution setting forth the fundamental principles that determine the powers and duties of the government and guarantee certain rights, privileges and immunities to the people. The Constitution which shall deal with those provisions of the Organic Act of Guam which relate to local self-government, shall provide for a republican form of government, a bill of rights, a system of courts, shall recognize and be consistent with the sovereignty of the United States over Guam and the supremacy of the provisions of the Constitution, treaties and laws of the United States applicable to Guam.

Section 15200.1. Constitutional Convention, calling of. A Constitutional Convention representing the people of Guam is called to convene May 4, 1977. When assembled the Convention shall have the powers and duties set forth in this Chapter.

Section 15200.2. Delegates to Convention, qualifications for and number of. (a) The Convention shall be composed of delegates elected from each municipal district of Guam as such districts are set out in Chapter I of Title XVI of the Government Code. No person shall be elected to nor seated as a member of the Convention unless he shall be:

1. A Citizen of the United States.

2. Qualified to vote on Guam.

3. A resident of the municipal district from which he has been elected for not less than thirty (30) days immediately preceding the date of his election.

(b) Each municipal district shall be entitled to one delegate for each 750 registered voters residing within a district, provided, however, that regardless of the number of registered voters each district shall have at least one delegate. It shall be the duty of the Election Commission to determine the number of delegates to be elected from each district. If after dividing the number of registered voters by 750 there is a remainder of 375 or more that district shall be accorded one additional delegate to the Convention.

Section 15200.3. Same, election of. (a) The Election Commission shall conduct a general election April 16, 1977, at which the voters of each municipal district shall elect delegates to the Convention. The Election Code and regulations promulgated thereunder shall apply with the following exceptions.

1. The election shall be non-partisan. (No political party directly or indirectly shall sponsor, nominate or endorse any of the candidates for the general election or delegates established by this Chapter).

2. No primary election shall be conducted.

Section 15200.4. Delegate, candidacy for. (a) No person shall be listed upon the ballot as a candidate for election as a delegate to the Convention nor certified by the Election Commission

as having been elected unless not later than March 19, 1977:

1. The person desiring to be a candidate shall file with the Election Commission a sworn affidavit stating that:

i. He is a citizen of the United States.

ii. Upon election day that he shall have been a resident of the district for which he seeks election for not less than thirty (30) days.

iii. He seeks election as a delegate to the Convention.

2. A person desiring to be a candidate shall file with the Election Commission a petition for his candidacy signed by not less than 50 nor more than 150 registered voters of the municipal district from which he seeks to be elected a delegate.

Section 15200.5. Voters, registration of. The Election Commission shall register votes for the election of April 16 through February 28, 1977, provided however, that those persons who voted on November 2, 1976 need not re-register. In order to facilitate the registration of voters the Election Commission is authorized and encouraged to accept the assistance of volunteer clerks who may register voters at schools, shopping centers, retail stores, and other places where the public may gather.

Section 15200.6. Delegate seats, apportionment of. No later than March 3, 1977, the Election Commission shall determine and announce the number of delegates to be elected from each municipal district. Its apportionment shall be based

upon the number of persons registered as voters as of February 28, 1977.

Section 15200.7. Results, declaration of. Immediately after the tabulation of the election returns for the election of April 16, 1977, the Election Commission shall determine the persons who have been elected to office and announce those results. After announcing the results of the election the Election Commission shall cause to be prepared a certificate of election for each delegate elected and shall cause to be delivered to the hands of each person elected a delegate the original of such certificate which shall be evidence of that person's right to attend and participate in the deliberations of the Convention.

Section 15200.8. Organizational meeting. The Speaker of the Guam Legislature, acting as a temporary presiding officer, shall convene the organizational meeting of the Convention at 10:00 a.m., May 4, 1977, in the Session Hall of the Guam Legislature. The presiding judge of the Superior Court, after receiving and verifying each person's certificate of election as a delegate, shall administer the oath of office to the delegates. Immediately after the taking of their oath the delegates shall proceed to organize by:

(a) Electing a presiding officer, who shall be the President of the Convention.

(b) Adopting rules of order governing the procedure of the Convention.

Immediately after the election of a presiding officer, that person shall assume the chair of the Convention. The Convention may meet for not more than five (5) days, which days need not be

consecutive, in May for organizational purposes. Thereafter the Convention shall recess until July 1, 1977, when it shall reconvene for its regular deliberations.

Section 15200.9. Duty of delegates. It shall be the duty of the delegates to the Convention to draft a Constitution for the people of Guam pursuant to the provisions of U. S. Public Law 94-584.

Section 15200.10. Convention, duration of. Not including the organizational meetings of the Convention, the Convention shall meet for not more than 120 sessions days, and in no event shall the Convention continue beyond October 31, 1977, provided, however, the Convention may reserve three (3) session days to occur between December 1 and December 15, 1977, to adopt its final report. Further provided that the President of the Convention may call a special session of the Convention within sixty (60) days after the proposed Constitution as so approved and modified by Congress is returned to Guam so that the delegates may formally comment on any amendments by Congress in advance of the referendum.

Section 15200.11. Report, transmission of. The Convention shall submit to the Governor, a proposed Constitution for Guam on or before December 31, 1977 which shall comply with the requirements set forth in Section 15200.9.

Section 15200.12. Convention, employees of. The Convention shall have the power to employ its own staff without conformity to the Civil Service system of the government. It may engage consultants to assist it in its studies and in the

preparation of its report. The Executive and Judicial branches are authorized to permit employees to be temporarily assigned to duties with the Convention, provided, however, the Convention shall reimburse the appropriate agency the cost of such as employee's service.

Section 15200.13. Vacancies, filing of. In the event a vacancy shall occur among the delegates during the course of the Convention, the Convention shall formally notify the Election Commission of this fact. The Election Commission shall then refer to the results of the April 16 election and certify as a replacement delegate the person who finished next highest in the district in which the vacancy occurred. In the event there was no person finishing lower in the election results, then the Commissioner of the district in which the vacancy occured shall nominate three (3) qualified persons from that district and the Convention shall by a plurality of the affirmative votes cast elect one of such persons to fill the vacancy.

Section 15200.14. Referendum. The proposed Constitution as so approved or modified by the Congress shall be submitted to the qualified voters of Guam for acceptance or rejection through an islandwide referendum to be held within ninety (90) days after Congress returns the proposed Constitution on the date the Legislature shall determine by resolution.

Section 15200.15. Rules and Regulations. The Election Commission shall promulgate the necessary rules and regulations to conduct the referendum and implement its purpose.

Upon the approval by not less than a majority of the voters (counting only the affirmative or

negative votes) participating in such referendum, the Constitution shall become effective in accordance with its terms."

Section 2. The sum of Two Hundred Fifty Thousand Dollars ($250,000) is appropriated from any available funds in the Unappropriated Surplus of the General Fund to the Constitutional Convention for the operation of the Convention created by this Act.

Section 3. The appropriation made by Section 2 of this Act shall be administered and authorized to be expended solely by the Constitutional Convention in accordance with its rules or by-laws. Notwithstanding any other provision of the law, the Certifying Officer shall be designated by the President of the Convention.

Section 4. The sum of Seventy-Six Thousand Dollars ($76,000) is appropriated from any available funds in the Unappropriated Surplus of the General Fund to the Election Commission for the purpose of conducting the election for delegates to the Convention and for the purpose of conducting the referendum.

The Election Commission shall expend no more than Thirty-Eight Thousand Dollars ($38,000) of this sum for each of these tasks.

Section 5. Not later than ninety (90) days of the effective date of this Act, the Governor of Guam, shall transmit a copy of this Act to the Secretary of State for transmittal to the United Nations.